

**BEFORE THE COMMISSION ON COMMON OWNERSHIP COMMUNITIES
MONTGOMERY COUNTY, MARYLAND**

Wojciech Fizyta,	:	
	:	
Complainant	:	
	:	
VS.	:	Case No. 473-0
	:	Hearing Date: 10/11/00
Quince Haven Homeowners Association	:	
Inc.,	:	
Respondent	:	

DECISION AND ORDER

The above entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, as amended, for a hearing on October 11, 2000, and the Commission having considered the testimony and evidence of record, it is this 29th day of November, 2000, found, concluded, and ordered as follows:

FINDINGS OF FACT

1. Complainant Wojciech Fizyta is the record owner of a lot which is part of the property which comprises Quince Haven. As such he is a member of the Quince Haven Homeowners Association, Inc.

2. Respondent Quince Haven Homeowners Association, Inc. is a homeowners association within the meaning of the Maryland Homeowners Association Act. It is a non-stock Maryland Corporation. Quince Haven HOA has the authority and responsibility, among other things, to enforce a Declaration of Covenants, Conditions and Restrictions applicable to Quince Haven and recorded among the Land Records of Montgomery County, Maryland. A copy of the Declaration is contained in the record of these proceedings.

3. Complainant's home is a colonial style single family detached dwelling. One of the features of the colonial style homes in Quince Haven is that windows have mullions. The mullions are installed on the interior of the windows, and they can be removed to allow cleaning of the windows.

4. There is also a section of contemporary style homes in Quince Haven whose windows do not have mullions, but Complainant's home is not one of these homes and is not contemporary in style.

5. Article VI, Architectural Control, Section 6.01 of the Quince Haven Homeowners Association, Inc. Declaration of Covenants, Conditions and Restrictions provides in part:

"Section 6.01. Architectural Change Approval. No building, fence, wall, shed or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made (including change in color) until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography and conformity with the design concept for the Property by the Board of Directors of the Association, or by a covenant committee composed of three (3) or more representatives appointed by the Board of Directors of the Association ("Covenant Committee"), or with respect to any Parcel, the Parcel Committee for such Parcel (for purposes of illustration, the Attached Unit Parcel Committee shall be authorized to carry out any and all architectural review and decisions related thereto under this Article with respect to such Attached Unit Parcel)."

6. Complainant removed the mullions on his windows without submitting plans and obtaining approval in writing from the Board of Directors or the Architectural Control Committee/Covenant Committee.

7. Pursuant to the Quince Haven Homeowners Association, Inc. Architectural Guidelines, Exterior Maintenance, and Property Use Restrictions (revised October 1, 1999), Quince Haven HOA cited Complainant for this action and a hearing was conducted on December 7, 1999 before the Quince Haven HOA Board of Directors.

8. At the December 7, 1999 hearing the Board of Directors determined that the removal of the mullions from Complainant's windows was a violation of Article VII of the Declaration of Covenants. By letter dated December 17, 1999 Quince Haven HOA advised the Complainant that he must reinstall the mullions within 30 days or fines would commence in accordance with the fining schedule contained in the Architectural Guidelines referenced in paragraph 7 above. Pursuant to Section 12.13 of the Declaration of Covenants, Conditions and Restrictions fines may be collected by Quince Haven HOA in the same manner as any other assessments as set forth in the Declaration of Covenants.

9. Complainant has not reinstalled the mullions on his windows. On March 24, 2000 Complainant filed this Complaint with the Commission on Common Ownership Communities.

10. By letter dated March 30, 2000 to the Department of Housing and Community Affairs from its community manager, Quince Haven HOA indicated that all colonial style homes in the Quince Haven community were built with mullioned windows. Quince Haven HOA

is aware of two or three other colonial style homes where the owners have removed the mullions, and the Association is currently engaged in enforcing those violations but the matters are on hold pending the outcome of this case.

11. Complainant removed the mullions on his windows as a matter of personal taste. Additionally the mullions are made in such a way that they are fragile, they break when removed for cleaning and then new mullions must be found which will fit the windows.

12. Complainant testified that:

a. Other dwellings in his subdivision have windows without mullions.

b. The mullions are inside the house and therefore removal of the mullions is not subject to Article VI.

c. Many houses have window screens on the outside of windows which have been removed and this action has not been cited as a violation.

d. The action of Quince Haven HOA violates his privacy.

CONCLUSIONS OF LAW

The Panel reaches the following conclusions of law:

1. The specific language of Article VI, Section 6.01 of the Quince Haven Homeowners Association, Inc. Declaration of Covenants, Conditions and Restrictions does not apply to interior changes or alterations. While other covenants may be drafted in such a way to encompass interior changes or alterations, this covenant is not so drafted and the panel's decision is based upon the specific language of this covenant.

2. Even if Article VI, Section 6.01 were construed to apply to interior changes or modifications, the burden is upon the person or entity attempting to enforce a restrictive covenant to establish that enforcement is reasonable. Notwithstanding that Quince Haven HOA was the Respondent, and not the Complainant, this burden still lies with Quince Haven HOA.

3. Quince Haven HOA introduced no evidence to establish that mullions in the windows of colonial style homes are such an essential architectural characteristic of those homes and have such a relationship to the general plan or scheme of development of the community that it would be reasonable to prohibit their removal.

4. The panel specifically finds that it would be unreasonable to prohibit the removal of mullions from the interiors

of the windows of Complainant's home.

ORDER


Based upon the foregoing Findings of Fact and Conclusions of Law it is this 29th day of November, 2000 ordered:

1. The decision of the Board of Directors of Quince Haven Homeowners Association, Inc. requiring the reinstallation of the mullions on Complainant's home is reversed. Complainant may not be required to reinstall or replace the mullions.

2. Complainant shall not be responsible for any fines or other costs to Quince Haven HOA as a consequence of these proceedings.

3. Any party aggrieved by the action of this Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure.

The decision of the Panel is unanimous.



John F. McCabe, Jr., Panel Chair
Commission on Common Ownership
Communities